

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	
	)	
<b>v.</b>	)	<b>CRIMINAL No. 95-29-P-H</b>
	)	
<b>THOMAS J. BARTELHO,</b>	)	
	)	
<b>DEFENDANT</b>	)	

**PROCEDURAL ORDER**

Chief Judge Singal has referred to me a letter of July 23, 2008, from the U.S. Attorney's office enclosing a May 27, 2008, letter from the acting director of the FBI Laboratory concerning FBI testimony in United States v. Bartelho, Criminal No. 95-29-P-H, concerning bullet lead analysis. I presided at the trial in that case and sentenced the defendant. The FBI's May 27 letter was inappropriately copied to the Maine Superior Court (Cumberland County) rather than this court. The letter states:

After reviewing the testimony of the FBI's examiner, it is the opinion of the FBI Laboratory that the examiner overstated the significance of the results of the examinations conducted, possibly leading the jury to misunderstand the probative value of the evidence.

A copy of this letter is attached as Exhibit A.

The defendant Bartelho has already raised this precise issue before the United States Court of Appeals for the First Circuit in an application for leave to

file a second motion to vacate under 28 U.S.C. § 2255. In that document, filed with the First Circuit on September 5, 2006, Bartelho stated:

The FBI has just recently abandoned its bullet-matching technique because it is flawed. At the time of Petitioner's trial, there was no expert witnesses available who could have testified for the defense to rebut the FBI expert's testimony.

The First Circuit denied Bartelho's request on October 12, 2006, stating:

Taken in light of all the evidence presented at trial—including the testimony of several witnesses implicating the applicant in the underlying offenses—the information now offered as newly discovered evidence would not be 'sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense.'

In light of that ruling by the court of appeals, there is no action for this court to take.

**SO ORDERED.**

**DATED THIS 15TH DAY OF AUGUST, 2008**

/s/D. BROCK HORNBY

**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CRIMINAL DOCKET FOR CASE #: 2:95CR29 (DBH)**

**United States of America**

represented by Richard W. Murphy  
Office of the U.S. Attorney  
District Of Maine  
100 Middle Street Plaza  
Portland, ME 04101  
(207) 780-3257

**v.**

**Thomas J. Bartelho,  
  
Defendant**

Represented By Thomas J. Bartelho, Pro Se  
Reg. No. 03371-036  
USP Leavenworth  
P.O. Box 1000  
Leavenworth, KS 66048-1000



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please refer to  
File No.

May 27, 2008

Richard Murphy  
US Attorney's Office  
District of Maine  
100 Middle Street, 6th Floor, East Tower  
Portland, ME 04101

Re: Case Name: Thomas Bartelho 95-29-P-H  
FBI File Number: 95B-HQ-1074174

Dear Mr. Murphy:

This letter follows up on our previous communication regarding bullet lead analysis conducted by the Federal Bureau of Investigation (FBI) Laboratory. Thank you for providing the information requested from the above-referenced case.

After reviewing the testimony of the FBI's examiner, it is the opinion of the FBI Laboratory that the examiner overstated the significance of the results of the examinations conducted, possibly leading the jury to misunderstand the probative value of the evidence.

Your office is encouraged to consult appellate specialists in your jurisdiction to determine whether you have any discovery obligations with respect to the finding stated above. As directed by the Department of Justice, we are notifying the Chief Judge of the court in which this case was tried of the results of our review by copying him or her on this letter.

Additionally, you should be aware that the FBI is cooperating with the Innocence Project. The Innocence Project is interested in determining whether improper bullet lead analysis testimony was material to the conviction of any defendant, and, if so, to ensure appropriate remedial actions are taken. In order to fully assist them in their evaluation, the FBI will provide the Innocence Project information from our files, including a copy of the FBI expert's trial testimony in this case and our assessment of that testimony.

Comparative Bullet Lead Analysis Review Process  
May 27, 2008

Further questions regarding our review of your case or the general issue of bullet lead examinations may be addressed to Marc LeBeau at: FBI Laboratory Division, 2501 Investigation Parkway, Room 4220, Quantico, VA 22135 (703-632-7408). General legal questions should be directed to Assistant General Counsel James Landon, Office of the General Counsel, FBI Headquarters, Washington, DC 20535 (202-324-1724).

Sincerely,



Melissa Anne Smrz  
Acting Director  
FBI Laboratory

cc:

Cumberland County Superior Court  
142 Federal Street  
Portland, ME 04112